

REMARKS

The claims are not amended herein. No new matter is presented in this Amendment.

Provisional rejection of claims 1, 2, 4 - 12 and 21 on the grounds of nonstatutory obviousness-type double patenting over claims 1 – 15 of co-pending U.S. Patent Application No. 10/817,761

At page 3 of the Office Action, claims 1, 2, 4 - 12 and 21 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 15 of co-pending Application No. 10/817,761. A terminal disclaimer in compliance with 37 CFR 1.321(c) is submitted herewith. Accordingly, withdrawal of the obviousness-type double patenting rejection over co-pending Application No. 10/817,761 is respectfully requested.

Rejection of claims 1 – 2, 7 - 12 and 21 under 35 U.S.C. §102(f) over U.S. Patent No. 7,223,500

At page 4 of the Office Action, claims 1 – 2, 7 – 12 and 21 were rejected under 35 U.S.C. §102(f) over U.S. Patent No. 7,223,500 on the alleged ground that the Applicant did not invent the claimed subject matter. For the following reasons, this rejection is respectfully traversed and reconsideration is requested.

The Combined Declaration/Power of Attorney for Utility/Design Patent Application submitted with the application, and which is of record, clearly states that the inventors are the original, first and joint inventor of the claimed subject matter. The Examiner has presented absolutely no evidence, other than merely describing the subject matter disclosed in U.S. Patent No. 7,223,500, to contradict the Applicants' Declaration. Since the earliest priority date of the present application (March 13, 2003) clearly predates the earliest priority date of U.S. Patent No. 7,223,500 (March 24, 2003), the disclosure of subject matter in U.S. Patent No. 7,223,500 by itself does not raise any issues or provide any evidence of derivation under 35 U.S.C. §102(f). (An English translation of the priority document of the present application is of record.) See, for example, *ex parte Kusko*, 215 U.S.P.Q. 972 (Pat. Off. Bd. App. 1981). Therefore, the rejection should be withdrawn.

Request for rejoinder of claims 13 - 20

Claims 13 – 20 depend directly or indirectly from independent claim 1. Claims 13 - 16 further define the organic solvent recited in independent claim 1. Claims 17 – 20 recite an additional ingredient in the electrolyte. Clearly, therefore, if claim 1 is allowable, claims 13 – 20 are also allowable. Accordingly, it is respectfully requested that upon the allowance of independent claim 1, that claims 13 – 20 be rejoined and allowed.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

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